# PENSIONS PLANNER

## YOUR GUIDE TO FUTURE DEVELOPMENTS

SPRING 2023

# Contents



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- **Five pensions developments to look out for in 2023**
- **New long-term funding requirements for DB schemes – Are they fit for purpose?**
- **Pensions and Bulk Annuities Ep5 – Just three tips for planning a buy-out**

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- **Funding, finding and finessing – Pensions in 2023**
- **Draft funding Code offers some flexibility to DB schemes and sponsors**
- **Pensions Regulator outlines approach to enforcing dashboards compliance**

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# Quarter in review

## 2.1 Pensions Regulator publishes consultation on the new DB funding code

The Pensions Regulator has launched its long awaited **consultation** on the **draft new funding code of practice** for defined benefit (DB) pension schemes. The draft Code sets out the Regulator's views on how the new statutory requirements for trustees to put in place a long-term funding and investment strategy for their scheme are intended to interact with the existing statutory funding regime.

In particular, the draft code details the Regulator's expectations in relation to:

- trustees agreeing a low dependency funding target and a low dependency asset allocation with their scheme's employer
- setting a journey plan to reach that point by the time a scheme reaches "significant maturity"
- assessing the employer covenant and the level of risk it can support
- assessing reasonable affordability when determining the appropriateness of a scheme's recovery plans
- how the new regime will apply to open schemes.

Alongside the draft Code, the Regulator has also set out the parameters schemes would need to meet to be deemed acceptable under the new light touch fast-track assessment route. Schemes that cannot, or that choose not to, meet these parameters will be required to justify the approach they have taken via the 'bespoke' approval process.

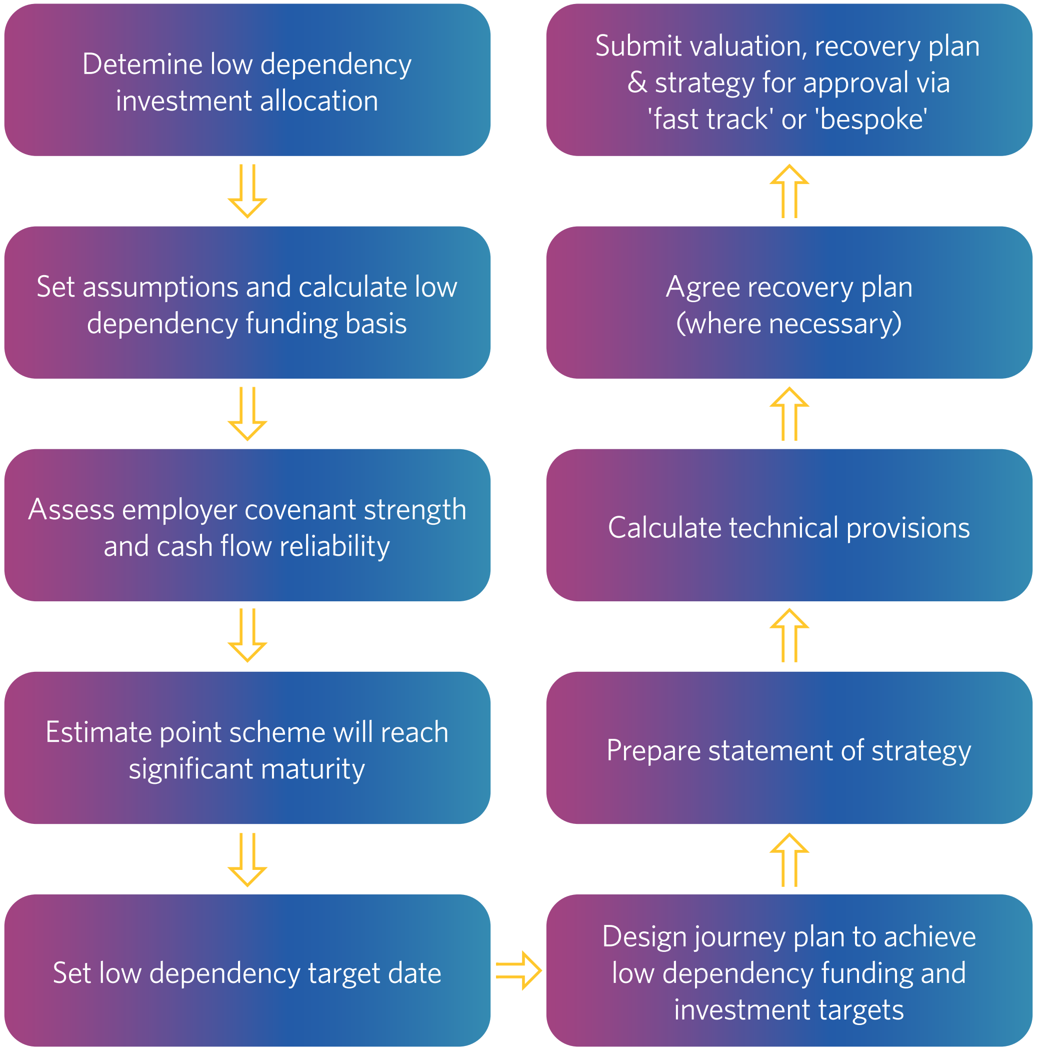
The current intention is for the new funding requirements and code to apply to valuations with an effective date on or after 1 October 2023. To deliver on this timetable, the draft Code has, unusually, been published for consultation before the relevant regulations have been finalised. However, this timetable may still slip. Some aspects of the draft Code may also need to be updated to reflect any changes contained in the final regulations. Once the new code is in force, it will replace the existing funding code which was introduced in 2014.

Both consultations close on 24 March 2023.

To find out more about what the new Code might mean for your scheme or organisation read our recent **blog**.

> **Comment:** Encouragingly, the draft Code indicates there will be more flexibility under the new regime than had been indicated in previous consultations. However, it is not always clear how to reconcile the approach outlined in the Code with the draft Regulations.
>
> There are so many elements to the new regime (and how it interacts with the current statutory funding requirements) that the full implications will only become apparent as schemes begin to apply this in the context of a valuation process.

### Approach to carrying out a valuation under the new funding regime



## 2.2 Government unveils raft of DC pensions reforms

On 30 January, the Government unveiled a range of measures which are designed to reduce the inequality between defined benefit (DB) and defined contribution (DC) pensions by delivering better value for DC savers and boosting fairness, predictability, and adequacy across the private pensions sector. The measures include:

- a call for evidence on **addressing the challenge of deferred small pots**;
- the Government's response to its consultation on **broadening the investment opportunities of defined contribution pension schemes**;
- a consultation on a new **Value for Money framework**, including metrics, standards and disclosures; and
- a consultation on **extending the opportunities for Collective Defined Contribution Pension Schemes**.

Announcing these initiatives, the Minster for Pensions, Laura Trott MP MBE, said:

"*There is a pension inequality gap between those who had secure retirements thanks to DB, to much more uncertainty now. Since 2012, Automatic Enrolment has transformed the pensions landscape in the UK for the better, but we know there's more to be done to ensure a fairer future for savers.*

*Being in an underperforming pension scheme can lead to someone missing out on thousands of pounds. The Value for Money framework and our new measures will improve security and create better returns for savers, so they can enjoy the retirement they've worked so hard for.*"

The proposals announced include:

- plans for schemes to disclose their investment performance, costs and charges, and quality of service via clear and comparable metrics;
- confirmation that the Government plans to reform the DC charge cap to exclude "*well designed*" performance fees which it hopes will give schemes more flexibility to invest in illiquid assets such as start-up companies, renewables and infrastructure;
- potential solutions to tackle the issue of small pots; and
- an extension of Collective Defined Contribution (CDC) schemes, most significantly to include multi-employer models.

Alongside these proposals, the Government also published the findings from **qualitative research on member engagement**. The findings cover pension understanding among members and decision-making influences, responses towards pension charges and potential standardisation of charging, current member behaviour towards small and deferred pension pots and recommendations to aid member engagement.

> **Comment:** These measures are designed to ensure that individuals get the most out of their DC savings. While these reforms should improve DC pensions, at some point the Government will need to grasp the nettle on contribution rates if it is serious about closing the gap between DB and DC pensions.

## 2.3 DC trustees urged to respond to diverse risks faced by DC members

The Pensions Regulator has published guidance for trustees of defined contribution (DC) schemes (including master trusts) on **Supporting DC Savers in the Current Economic Climate**. It follows on from its previous **statement** issued in the immediate aftermath of the bond market crisis in September/October 2022. Although DC schemes are not directly impacted by the issues affecting LDI, DC savers are not immune to market events. Significant market volatility from both equities and falling bond values, along with increases in inflation and interest rates, has affected those accessing their pension savings.

The guidance is timely, coming on the same day that the Pensions and Lifetime Savings Association updated their **Retirement Living Standards** and warned that retirees seeking to achieve a basic standard of living will need to save significantly more to cover an anticipated increase in their expenditure of nearly 20% due to high inflation.

### Diverse impact

Trustees are reminded that the impact of the fall in bond prices will be diverse – depending upon individual DC savers allocation to bonds, where they are in their retirement journey, and how they plan to access their savings. The impact could be more significant for those closer to retirement, depending on their investment strategy and when and how they intend to access their savings.

Trustees are encouraged to support savers closer to retirement, so they understand the implications of their decisions and are cautioned against making hasty decisions which could crystallise losses, leading to poorer outcomes. Unsupported members may also be more vulnerable to scammers.

### Action plan

Trustees are urged to develop their own action plan to respond to the risks faced by DC savers. This needs to include a review of their:

- governance and investment arrangements; and
- the support they provide to their members.

To find out more about the actions the Regulator expects trustees of DC schemes to be taking check out our **blog**.

> **Comment:** Little in this statement is new and much of it is relevant at any time, not just during a period of economic uncertainty. But it serves as a reminder that DC schemes require careful management and it continues the Regulator's calls for smaller DC schemes to consider whether consolidation into a master trust would be the best option for their members.

## 2.4 FCA launches thematic review of retirement income advice

The FCA has announced that it is beginning work on a substantive review of retirement income advice. This work stems from consumer responses to the pension freedom reforms and is also linked to the work on lifetime mortgages which the FCA committed to in its 2022/23 Business Plan. Previous work on this was paused due to the Covid 19 pandemic. This review will examine how the retirement income advice market is currently functioning and will also focus on how firms are responding to changing consumer needs as a result of the cost-of-living crisis.

The results of this review will be used to inform the FCA's future strategy for the sector and will also be an important indicator of how firms are implementing the Consumer Duty. The FCA will notify firms who are selected for review in early 2023 and they will also engage with trade bodies at this stage. The FCA aims to publish a report setting out findings in Q4 2023.

**Comment:** This is a much needed and timely review of how pension freedoms is working in practice. It is likely to result in some substantive changes to the support pension providers need to provide for savers up to and through retirement and, potentially, to the retirement pathways that are available.

## 2.5 PPF significantly reduces levy estimate and seeks views on future levy design

The Pension Protection Fund (PPF) has **confirmed** that its levy estimate for 2023/24 is £200m. This reflects its plans to significantly reduce the amount it collects from 2023 onwards, following a review of its **Long-Term Funding Strategy**.

In light of its strong financial position, driven by strong investment performance and changes in the risk profile of the PPF universe, the PPF has confirmed it is entering a new "maturing" phase in its funding journey. As such, the PPF has concluded it is now able to move to charging a significantly lower levy without risking its ability to pay compensation. Its focus in this next phase will shift from building to maintaining its financial resilience.

### Funding update

As of 31 March 2022, the PPF had reserves of £11.7 billion. This means its funding is close to what it expects to need to meet its own "financial resilience test". This is met where the PPF's reserves are considered to be sufficient to provide a high level of confidence of being able to pay compensation to both current and future members in full without relying on investment returns or the levy. The PPF's central expectation is that on balance and over time its funding will improve further.

### 2023/24 levy

Scheme funding has improved over the past 12 months and, as a result, the PPF's current exposure to claims has declined. In light of this, the PPF's current level of reserves and a lower expectation for future claims, the PPF has reduced the levy estimate for 2023/24 to £200 million, compared to £390 million for the current levy year.

The PPF is also planning to reduce the sensitivity of the levy to insolvency risk by adjusting the levy rates that are apply for each levy band with the intention of limiting volatility if a sponsoring employer moves between bands. To achieve this, the PPF is halving the relative increases between each levy band, altering levy rates for bands 2-10. This reduction in levy rates will reduce levies by around £60 million.

As a result of the proposed reduction in the levy and the changes to the levy rules, 98% of schemes are expected to pay less levy in 2023/24. The majority of schemes that pay a risk-based levy are expected to see their risk-based levy decrease by more than half.

### Future levy design

The PPF believes the levy should evolve in future in response to changes in the PPF universe and the fact it expects to collect a lower levy moving forwards. In light of this, the PPF has outlined four design principles which it believes should help shape the future design of the levy:

- increased flexibility in the amount of levy the PPF aims to collect;
- increased flexibility to charge based on the size of the scheme (scheme-based levies);
- rebalancing the risk-based levy to emphasise underfunding and a lesser focus on employer insolvency; and
- being open to using different approaches to how the levy is calculated depending on scheme size.

To support further reductions in the levy in the future, the PPF is working with the DWP to explore legislative change so that the PPF has the ability, in the unlikely event it is needed, to raise the levy again more freely than under the current regime. The PPF has also started to engage with stakeholders on how to turn its broad design principles into more detailed plans.

**Comment:** The fact the PPF is able to start reducing the levy will come as a welcome relief for most DB schemes and sponsors at a time when there are cost pressures on all sides. The PPF Board may have been able to go further if it was not restricted in the amount by which it can increase the levy from year to year (currently capped at 25% of the previous year's levy). This highlights the need for the levy to be reformed so that it remains fit for purpose as the PPF moves to the next stage of its journey.

## 2.6 Pensions Regulator outlines approach to enforcing dashboards compliance

With the connection deadlines for some of the UK's largest pension schemes fast approaching, the Pensions Regulator has launched a **consultation** on its dashboard compliance and enforcement policy. The Regulator recognises that delivering pensions dashboards is a huge challenge for the industry. As such, it has indicated it will seek to support trustees who are taking active steps to comply with their obligations, whilst taking a tough approach against wilful or reckless non-compliance.

### Dashboard duties

The Pensions Regulator is responsible for ensuring occupational pension schemes comply with their duties under the Pensions Dashboards Regulations 2022 (the **Dashboards Regulations**).

The Dashboards Regulations will place new legal duties on trustees and managers of occupational pension schemes with 100 or more members, which are designed to ensure that dashboards are successful and deliver a positive user experience. In particular, trustees of in scope schemes will be required to:

- register with the Money and Pension Service (MaPS);
- connect to the dashboards infrastructure by a prescribed deadline and maintain an ongoing connection thereafter;
- ensure their scheme is in a position to receive personal information on savers, and search and match savers to their pensions;
- put in place a matching policy which includes the criteria their scheme will use to identify positive matches and, perhaps more importantly, possible matches;
- provide their scheme's members with information about their pensions through the dashboard of the individuals choosing where a positive match is made; and
- co-operate with MaPS when preparing to connect, maintain records and report prescribed information to the Regulator and MaPS on a regular basis.

The Regulator also expects trustees to have read and implemented MaPS' standards and dashboards guidance (including best practice guidance), where appropriate.

### Enforcement

The Regulator will have the power to issue fines for non-compliance on trustees and third parties of up to £50,000 per breach. It will also have the power to require trustees or a relevant third party to take action to address any failings.

To find out more about the Regulator's approach to enforcing the new dashboard duties read our **blog**.

**Comment:** The Regulator is proposing a pragmatic approach to ensuring that schemes comply with their dashboard duties, with the emphasis on educating and supporting trustees to facilitate compliance. However, this is likely to change as dashboards become more established. It is also clear that wilful or reckless non-compliance will not be tolerated.

## 2.7 Proposed regulatory framework for pensions dashboard service firms

The Financial Conduct Authority (**FCA**) will be responsible for regulating any commercial organisation that operates a pension dashboard service. Therefore, in readiness for the launch of pensions dashboards the FCA is **consulting** on the rules that will apply to pensions dashboard services (**PDS**) firms.

### Conduct standards

The FCA's rules will aim to set high standards across all dashboard services offered by PDS firms and aim to ensure that services enable consumers to:

- confidently and positively engage with their pensions; and
- be safely supported in retirement planning, with limited scope for becoming a target for cross-selling or distracted from the pensions engagement mindset.

In order for this high standard to be set, the FCA propose to:

- require PDS firms to disclose appropriate information, signposts and warnings so that consumers know who they are dealing, understand the risks of acting on dashboard data alone and know where and how to access additional information and services (such as pension guidance);
- permit PDS firms to offer dashboard users the option of exporting their pensions information to themselves or to the PDS firm that is displaying their pension data (subject to certain safeguards and controls); and
- offer PDS firms the scope to develop and offer innovative post-view services to dashboard users.

### Scam prevention

The FCA is anticipating the potential for customers using dashboard services to become a target for pension and investment scams. Therefore, it proposes that it will be mandatory for dashboards to signpost to Scam Smart and to publish warnings to remind consumers:

- that their view data is sensitive and valuable;
- to use the FCA Register to check whether a third party is who they say they are; and
- to think carefully about whether a third party really needs to see the information they are requesting.

The warnings will also be required discourage customers from giving a third-party control of their device, which is becoming an increasingly common tactic used by scammers.

**Comment:** The FCA's rules are trying to strike a balance between enabling dashboard providers to design engaging dashboards and innovative post-view services and to achieve a return on their investment, whilst also protecting dashboard users from inappropriate marketing and from becoming victims of pension and investment scams.

## 2.8 Parliamentary scrutiny of LDI

A number of Parliamentary committees have been scrutinising the use of liability-driven investments (LDI) by UK pension funds and the impact of fiscal events in Autumn 2022. To date, witnesses have included senior figures from the Bank of England, the Financial Conduct Authority (FCA), the Pensions Regulator (TPR), the Pension and Lifetime Savings Association and asset managers.

Scrutiny from the Committees has focused on a range of issues including the use of leverage and repos by UK pension schemes, regulatory oversight of LDI, regulation of investment consultants and trustee understanding and operational issues.

**Contributing factors**

Although several witnesses have stressed the exceptional nature of the events which led to the LDI liquidity crisis following the mini budget at the end of September last year, a number of other factors have been identified as having contributed to this. These include:

- operational issues, including concerns about the speed with which some schemes were able to respond to the crisis;
- the operational pressure faced by advisers and asset managers given the number of schemes affected;
- stress tests (by regulators, asset managers and trustees) not anticipating such a sharp and rapid rise in gilt yields;
- the lack of data available to UK regulators to enable them to identify the risks posed by schemes' LDI strategies; and
- how illiquid and dysfunctional the gilt market became.

Concerns have also been expressed about the resilience of the non-banking system more generally and the lack of regulatory oversight of this sector.

**Policy and regulatory response**

It seems inevitable that action will be taken by policymakers and regulators in light of the LDI liquidity crisis. While it is not possible to be certain what steps they will take, based on the issues and concerns identified in the Parliamentary evidence sessions to date, this may include some or all of the following:

- new requirements for UK pension schemes, asset managers and funds to provide more data to UK and overseas regulators on underlying scheme investments (including LDI exposures and the associated leverage);
- pension scheme investment consultants being brought within the FCA's regulatory perimeter;
- new requirements for stress testing to assess the impact of more severe market events;
- new requirements for trustees to ensure they have adequate operational and governance arrangements to manage liquidity in stressed scenarios; and
- new regulatory guidance on the use of LDI and leverage by pension schemes.

**Comment:** Lessons are still being learnt from the events of early Autumn last year. It is important trustees assess the impact of the liquidity crisis on their scheme and ensure their investment management, operational and governance arrangements are appropriate should a similar crisis occur in future.

## 2.9 Pensions Regulator issues statement on LDI

At the end of November, the Pensions Regulator issued a **guidance statement** for trustees of UK occupational pension schemes on the use of LDI in which it calls on trustees to maintain an appropriate level of resilience in leveraged LDI arrangements to better withstand a fast and significant rise in bond yields. The statement also calls on trustees investing in leveraged LDI to improve their scheme's operational governance.

In its statement, the Regulator also welcomed coordinated **statements** made by the Central Bank of Ireland (CBI – Ireland) and the Commission de Surveillance du Secteur Financier (CSSF – Luxembourg) on the resilience of LDI funds in which they set out their expectations for the level of the buffer that should be retained within such funds.

**Levels of resilience**

The statements from CBI – Ireland and CSSF – Luxembourg recognise that the resilience of GBP LDI Funds across Europe has improved significantly since the events of early Autumn, with an average Yield Buffer in the region of 300-400 basis points being built up. However, the Irish and Luxembourg regulators make clear they expect these levels of resilience and the reduced risk profile of GBP LDI Funds to be maintained, given the market outlook, and they do not consider any reduction in the resilience at individual sub-fund level to be appropriate at this time.

The UK Pension Regulator's statement supports these calls and makes clear that the same level of resilience should be maintained across pooled and segregated leveraged LDI mandates and also single-client funds. If a scheme is not able to hold sufficient liquidity, or is unwilling to commit to that level of liquidity, the Regulator expects the scheme's trustees to consider their level of hedging with their advisers to ensure they have the right balance of funding, hedging and liquidity.

**Actions for trustees**

Among other things, the Pensions Regulator has made clear it expects trustees to:

- work with their advisers to test the liquidity buffer in their scheme's LDI arrangements; and
- review their operational and governance processes and consider what practical steps they can implement in light of lessons learned from the events of September and October 2022.

The Regulator also recommends trustees continue to have detailed conversations with LDI managers on liquidity for pooled and segregated LDI arrangements, including:

- what the triggers for replenishment are;
- confirming the process for meeting collateral/margin calls; and
- providing visibility of liquidity to LDI managers as appropriate.

For more on the Regulator's statement and the actions it expects trustees to be taking read our **blog**.

**Comment:** As the statements from the Irish and Luxembourg regulators recognise most schemes and asset managers have taken steps to significantly increase the level of resilience within their leveraged LDI funds in light of recent events. However, the Irish, Luxembourg and UK regulators are clearly concerned to ensure this level of resilience is maintained moving forwards. The UK Pensions Regulator is also keen to ensure appropriate lessons are learnt and that trustees of UK schemes revise their operational and governance arrangements so they are better placed to respond to future market turmoil.

## 2.10 Government announces financial services regulatory reforms

On 9 December 2022, the Chancellor **announced** over 30 regulatory reforms which, together with the **Financial Services and Markets Bill**, the Government hopes will drive growth and competitiveness in the UK financial services sector.

The proposed reforms are designed to:

- maintain and build a competitive marketplace and promote the effective use of capital;
- secure the UK's leadership role in sustainable finance;
- ensure the regulatory framework supports technology and innovation; and
- deliver for consumers and businesses.

**Key measures**

The proposed reforms will impact a wide range of businesses and consumers across the financial services landscape. Some of the reforms that will impact the pensions industry are already underway. For example, the Chancellor confirmed the Government's plans to:

- lay regulations which will remove well-designed performance fees from the pensions regulatory charge cap in early 2023; and
- introduce a 'Smarter regulatory framework' by repealing retained EU law on financial services and replacing it with a comprehensive model of financial services regulation tailored to the UK.

Alongside these existing reforms, the Chancellor also announced that the government would:

- work with the FCA to examine the boundary between regulated financial advice and financial guidance;
- take steps to increase the pace of consolidation among DC pension schemes; and
- consult on new guidance on Local Government Pension Scheme asset pooling and on requiring LGPS funds to consider investment opportunities in illiquid assets.

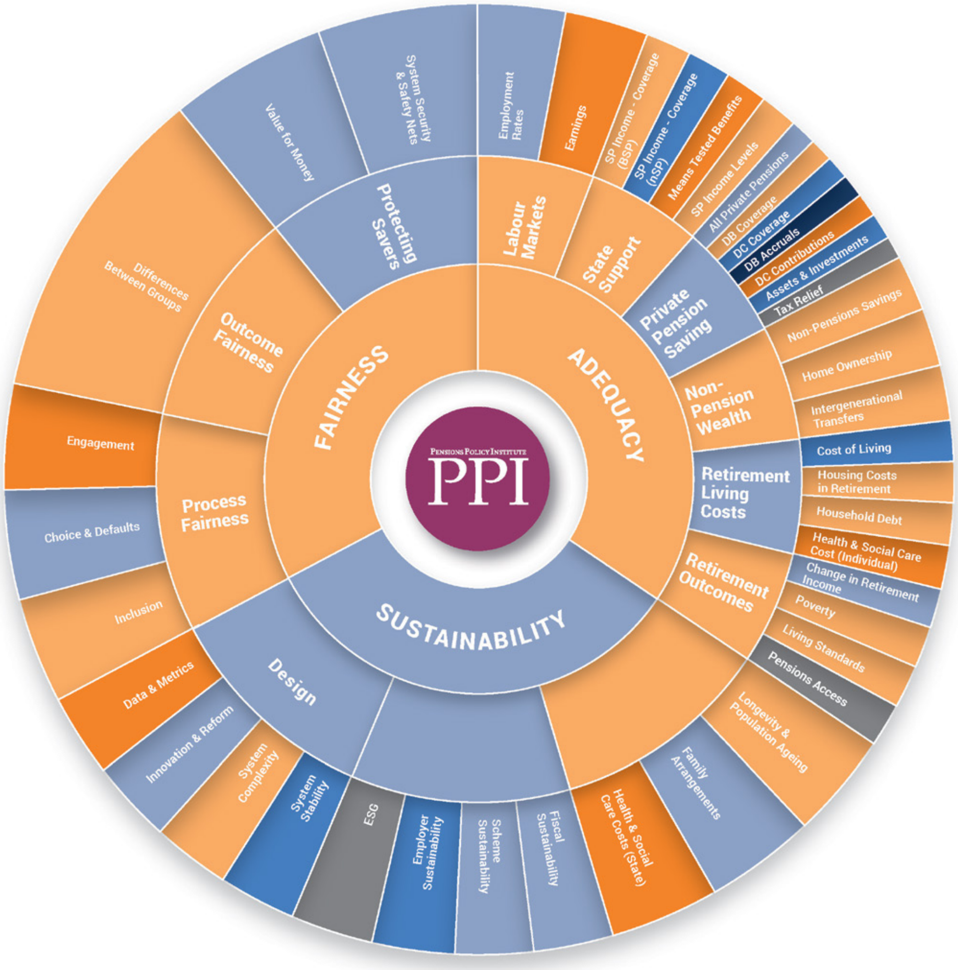
More broadly, regulated firms in the pensions industry will also be interested to note that the Government is legislating through the Financial Services and Markets Bill to introduce new secondary objectives for the FCA and PRA to provide for a greater focus on growth and international competitiveness. It is also planning to review the SMCR regime with regulators during the first quarter of 2023. As part of this, the government intends to launch a Call for Evidence to seek views on the regime's effectiveness, scope and proportionality, and on potential improvements and reforms.

Finally, the Government intends to publish an updated Green Finance Strategy early next year and also intends to consult in the spring on plans to bring ESG ratings providers into the FCA's regulatory perimeter.

You can read more about the planned reforms in our recent **blog**.

**Comment:** A primary driver behind several of these reforms is the Government's long-stated ambition of increasing investment in productive assets by DC pension schemes and insurers. Time will tell whether these measures will move the dial in terms of helping achieve this objective.

## 2.11 PPI publishes first UK Pensions Framework report




- Strong support for system objective
- Good support for system objective
- Some support for system objective
- Somewhat fails to support system objective
- Poor support for system objective
- Fails to support system objective
- Unrated in 2022 Edition due to quality of data

Source data relates to financial year 2020-21 or most recently available data.

The policy wheel reflects the analysis in **PPI – UK Pensions Framework: 2022 Edition Trends, Transitions and Trade-offs in the UK Pension System**. It is reproduced with the permission of the Pensions Policy Institute.

In November 2022, the Pensions Policy Institute (PPI) published the first PPI UK Pensions Framework **report** on the Trends, Transitions and Trade-offs in the UK Pension System, in association with Aviva.

The UK Pensions Framework is a strategic, multi-year project that aims to support and inform long-term policy making in the UK pension system. It aims to provide a consistent and systematic approach to examining and simulating changes in adequacy, sustainability and fairness of pension provision in the UK State and private pension systems, which will determine the financial security that people have in later life.

The 2022 report looks at how the UK pension system is supporting retirement outcomes among pensioners of today and examines the implications of pension policy and saving behaviours for pensioners of tomorrow.

**Comment:** This is the first time any organisation has attempted to map the complex interactions that impact the fairness, adequacy and sustainability of the UK pension system. The analysis in this first report shows how changes in the past few decades have tilted the balance in favour of sustainability at the expense of fairness and adequacy.

# Timeline

March 2023
**TPR**
Nausicaa Delfas becomes new Chief Executive at the Pensions Regulator

15 March 2023
**Treasury**
Spring Budget

Spring 2023
**Scams**
PSIG due to publish updated scams Code

May 2023
**State Pension**
Second review of State Pension age due to conclude

June 2023
**Funding**
Final regulations and new DB funding Code due to be laid before Parliament

2023

31 July 2023
**FCA**
New Consumer Duty comes into force in relation to new and existing products and services

Summer 2023
**Governance**
New single Code of Practice due to be introduced

31 August 2023
**Dashboards**
Phased compulsory on-boarding of schemes and providers due to begin

Q4 2023
**Retirement income**
FCA due to publish findings from retirement income thematic review.

1 October 2023
**Funding**
New DB funding requirements and Code due to come into force

# Next 3 months

## 4.1 Schemes and sponsors need to assess implications of new DB funding requirements

Although the new statutory funding requirements for defined benefit (DB) pension schemes and the accompanying Code of Practice are not due to come into force until October 2023, it is important trustees and sponsors begin to assess how these new requirements will impact their scheme.

In particular, they should assess how the new requirements are likely to impact:

- their journey plan and end game objectives;
- the pace of funding required from scheme employers;
- their scheme's investment strategy;
- payment of dividends and business investment; and
- the reliance that can be placed on existing contingent assets and the merits of granting new or additional contingent security to the scheme.

Some schemes may find that the new requirements will not materially impact their journey plan or the pace of funding. However, for others the impact could be significant, particularly where a scheme is underfunded and:

- it has a weak sponsor covenant or a sponsor that can afford to clear the deficit more quickly than under the existing recovery plan; and/or
- it has passed or is approaching the point of 'significant maturity'.

Even though the new requirements will not apply to valuations with an effective date pre-1 October 2023, trustees and sponsors currently preparing valuations should consider the extent to which they ought to take account of the new requirements as part of the current valuation process. This is particularly important where a scheme is already at or approaching significant maturity because, by the time the next valuation comes around, the window for meeting the scheme's low dependency funding target will have reduced significantly.

To find out more about the impact of the new funding requirements read our recent **blog**.

**Action:** As well as assessing the likely impact of these new requirements on their own scheme, trustees and sponsors should consider whether to respond to any aspects of the consultation, which closes on 24 March 2023, particularly where the draft Code does not cater for the needs of their scheme.

## 4.2 Pensions Regulator appoints new Chief Executive

The Pensions Regulator has announced the appointment of Nausicaa Delfas as its new Chief Executive. Nausicaa will begin the role in March 2023, replacing the current Chief Executive, Charles Counsell. She joins from her current role as Executive Director, Governance, at the Financial Conduct Authority having previously been the interim Chief Executive and Chief Ombudsman at the Financial Ombudsman Service.

The Regulator has also announced that David Fairs, Director of Regulatory Policy, will be leaving the organisation in March 2023.

**Action:** It will be important for trustees and sponsors to monitor any changes in emphasis and approach from the new Chief Executive at a time when the Pensions Regulator will soon be introducing its new funding Code and its new single Code and as it is still responding to the fall-out from the LDI liquidity crisis and deciding how and when to use its new and enhanced regulatory powers.

# Next 3 to 12 months

## 5.1 Pension dashboards on track to launch in 2023

The Government has confirmed the timetable for implementing pensions dashboards in its **response** to the consultation on the draft Pensions Dashboards Regulations 2022. While the largest auto-enrolment master trusts and money purchase schemes together with public service pension schemes have been given a little longer to connect than initially proposed, the connection deadlines for most schemes are unchanged. This means the first schemes will be required to connect to the dashboards by 31 August 2023.

At the same time, the Government has also confirmed that:

- the Pensions Regulator will be able to take enforcement action against employers where they are responsible for a scheme's compliance breach (eg where an employer fails to pass on workers' information to a scheme or provider in time or where they provide incomplete or inaccurate information);
- schemes are required to prepare a data protection impact assessment as part of the steps they must take to comply with the UK's data protection laws;
- response times for providing pension value data will be set at 3 days (for money purchase benefits) and 10 days (for non-money purchase benefits) where the data is not readily available, with reliance being placed on the Regulator's discretion not to take enforcement action in complex cases; and
- the FCA will be responsible for addressing concerns regarding advertising on dashboards and the risks associated with the ability to export data.

**When will dashboards be made available?**

Although schemes will be required to begin to connect to the dashboards architecture from later this year, dashboards will not be made available to the general public until what is being referred to as the 'dashboard available point' (DAP). The Government will be required to give the industry at least six months' notice of the DAP once it is satisfied that dashboards are ready to 'go live'.

The Pension Dashboards Programme has also **updated** the standards that will govern the operation of pensions dashboards following a consultation last summer. These standards cover issues such as the data formatting schemes will be required to adopt, how schemes will interface with the dashboards ecosystem, how information will be presented on the dashboards and the reporting requirements that will apply to schemes and dashboard providers.

**Actions for trustees**

Preparing for dashboards is a significant challenge and trustees need to ensure they have a suitable implementation plan in place to ensure their scheme is ready to connect from its staging date. As part of this plan, trustees need to:

- review the quality of their dashboards data and take steps to improve it where necessary;
- decide on their scheme's approach to matching and produce a matching policy; and
- carry out a data protection impact assessment.

Trustees should also update their contracts with their scheme administrator and any other parties involved in delivering and maintaining their scheme's dashboards connection, to ensure each parties' responsibilities are clear and to address what happens if things go wrong.

**Action:** Larger schemes and providers should be taking active steps to ensure their scheme and data will be "dashboard ready". Medium sized schemes should be speaking with their advisers and administrators to ensure a suitable project plan is in place.


## 5.2 New single Code of Practice to introduce new requirements for schemes

It is anticipated the long-awaited new single Code of practice will be published by Summer 2023. The new Code consolidates most of the Regulator's existing Codes into a single document. It will also update the Regulator's expectations of workplace pension schemes and is designed to make those expectations clearer and more accessible.

As well as updating existing requirements, the **draft Code** contains a number of new requirements. In particular, it sets out what schemes must do to meet the new requirements for schemes to:

- put place an "effective system of governance", and
- conduct a new annual "own risk assessment".

These requirements will implement elements of the IORP II Directive not currently reflected in UK pensions regulation.

The draft Code also sets out the Regulator's expectations on issues such as:

- cybersecurity,
- stewardship, and
- climate change.

The draft Code also indicated that the requirement for certain processes to be maintained in relation to core financial transactions (which under legislation only extends to DC schemes) will be extended to all schemes. In light of recent events, we would also expect the final version of the Code to set out the Regulator's expectations regarding the governance and operational processes that schemes should have in place to support trustees' investment decision-making and liquidity management, in the context of liability driven investments and more generally.

### Status of new Code

The new Code will have the same status as the existing Codes. As such, in most instances there will be no direct penalty for failing to follow the new Code or to meet the expectations set out in it. However, the Regulator may rely on the Code in legal proceedings as evidence that a legislative requirement has not been met. Similarly, if the Regulator believes there are grounds to issue an improvement or a compliance notice, it may refer to expectations set out in the new Code.

Once the new Code is in force, the existing codes which it replaces will be revoked in their entirety.

**Action:** When the new single Code is finalised, trustees and administrators will need to familiarise themselves with its content and take steps to ensure they comply with the new and updated regulatory expectations.

## 5.3 New Consumer Duty comes into force on 31 July 2023

FCA regulated firms, including pension providers, are taking steps to prepare for the introduction of the new Consumer Duty which will apply to:

- new and existing products and services that are open for sale or renewal **from 31 July 2023**; and
- closed products and services **from 31 July 2024**.

### Implementation challenge

Firms face a significant task embedding the new Duty within their organisation and identifying and implementing the changes needed to comply with the Duty. This task is not helped by the fact there remains significant areas of uncertainty over what the Duty means and how it should be applied in a number of contexts, including:

- how the Duty should be applied where a firm provides regulated products or services to an occupational pension scheme (including master trusts);
- when a firm in a distribution chain will be considered to be in a position to "determine or materially influence" the outcomes for retail customers;
- the particular circumstances in which the Duty will need to be considered at an individual consumer level as opposed to a target market level; and
- how the principles of reasonableness and proportionality should be applied, where relevant.

The FCA has sought to clarify the first of these in a follow-up **consultation** in which it outlines some proposed amendments to its final rules.

### Retrospective effect

Despite assurances that the Duty would not have retrospective effect, it is clear from the FCA's response and the final rules that firms need to give careful consideration to how it impacts products manufactured and sold before the Duty comes into force, including closed books.

According to the final guidance, this may include making changes to future payments by a consumer relating to an existing or legacy product or service that is not considered to offer fair value, where a customer can terminate the contract without an exit charge, as the FCA does not consider these to be "*vested rights*". Additionally, firms acquiring closed books in the future will need to consider carefully what information they need from the seller so that they can comply with the Consumer Duty after the acquisition. These issues will be particularly pronounced for firms with long-term products (eg mortgage providers and life insurers).

### Distribution chains

Firms in distribution chains will have to carefully consider when they consider themselves to be able to "determine or materially influence" outcomes for retail customers. In the context of complex supply chains, the extent of a firm's influence may not be clear and overlapping responsibilities may mean the analysis is complex. The application of the Duty to a distribution chain may, therefore, involve considerable co-operation and discussion between the parties in the chain.

In addition, the final rules require firms in a distribution chain to notify:

- the FCA if they become aware that another firm in a distribution chain is not "or may not be" complying with the Duty; and
- other firms in a distribution chain if it thinks they have caused, or contributed to, harm to retail customers.

It is unclear how far this obligation extends, but it has the potential to have significant consequences for relationships between firms in a distribution chain.

### Vulnerable consumers

The FCA is particularly concerned about consumers in vulnerable circumstances, as it considers them to be at greater risk of harm. The FCA expects firms to consider the diverse needs of their customers and to take additional care to ensure vulnerable consumers and those with protected characteristics achieve outcomes that are as good as those of other consumers.

The FCA's existing **guidance** for firms on the fair treatment of vulnerable consumers will continue to apply and the rules relating to the Consumer Duty are designed to embed consideration of these consumers at every stage of the customer journey.

**Action:** All FCA regulated firms (including pension providers) need to carry out a fundamental review of their in-scope products and services and make any necessary changes to ensure they comply with their new obligations from 31 July 2023.

# On the horizon

## 6.1 Government confirms plans to increase minimum pension age to 57

The Finance Act 2022 contains legislation that will increase the minimum pension age at which benefits under registered pension schemes can generally be accessed, without a tax penalty, from age 55 to age 57 from 6 April 2028. The legislation includes a protection regime for members who currently have an "unqualified right" to access their benefits under a registered pension scheme before age 57 and for members in certain high-risk occupations.

For all other members, the age at which they can access their benefits without paying an unauthorised payments charge will increase from April 2028 and schemes need to decide when and how to inform affected members about this.

The proposed protection regime has received criticism because it will create significant administrative headaches for schemes and providers, particularly where a member transfers protected benefits into a scheme with a minimum pension age of 57.

**Action:** Trustees and providers must decide when and how to inform affected members to ensure they have sufficient notice of any increase in the age at which they can access their benefits so they can adjust any plans they may have to retire or access their benefits accordingly.

# Notes